

### § 3.136

### 12 CFR Ch. I (1–15 Edition)

(ii) The LGD of the guarantee or credit derivative, if the guarantee or credit derivative does not provide the national bank or Federal savings association with the option to receive immediate payout on triggering the protection; and

(5)  $\rho_{os}$  (asset value correlation of the obligor) is calculated according to the appropriate formula for (R) provided in Table 1 in § 3.131, with PD equal to PD<sub>o</sub>.

(6) b (maturity adjustment coefficient) is calculated according to the formula for b provided in Table 1 in § 3.131, with PD equal to the lesser of PD<sub>o</sub> and PD<sub>g</sub>; and

(7) M (maturity) is the effective maturity of the guarantee or credit derivative, which may not be less than one year or greater than five years.

#### § 3.136 Unsettled transactions.

(a) *Definitions.* For purposes of this section:

(1) *Delivery-versus-payment (DvP)* transaction means a securities or commodities transaction in which the buyer is obligated to make payment only if the seller has made delivery of the securities or commodities and the seller is obligated to deliver the securities or commodities only if the buyer has made payment.

(2) *Payment-versus-payment (PvP)* transaction means a foreign exchange transaction in which each counterparty is obligated to make a final transfer of one or more currencies only if the other counterparty has made a final transfer of one or more currencies.

(3) A transaction has a normal settlement period if the contractual settlement period for the transaction is equal to or less than the market standard for the instrument underlying the transaction and equal to or less than five business days.

(4) The positive current exposure of a national bank or Federal savings association for a transaction is the difference between the transaction value at the agreed settlement price and the current market price of the transaction, if the difference results in a credit exposure of the national bank or Federal savings association to the counterparty.

(b) *Scope.* This section applies to all transactions involving securities, foreign exchange instruments, and commodities that have a risk of delayed settlement or delivery. This section does not apply to:

(1) Cleared transactions that are subject to daily marking-to-market and daily receipt and payment of variation margin;

(2) Repo-style transactions, including unsettled repo-style transactions (which are addressed in §§ 3.131 and 132);

(3) One-way cash payments on OTC derivative contracts (which are addressed in §§ 3.131 and 132); or

(4) Transactions with a contractual settlement period that is longer than the normal settlement period (which are treated as OTC derivative contracts and addressed in §§ 3.131 and 132).

(c) *System-wide failures.* In the case of a system-wide failure of a settlement or clearing system, or a central counterparty, the OCC may waive risk-based capital requirements for unsettled and failed transactions until the situation is rectified.

(d) *Delivery-versus-payment (DvP) and payment-versus-payment (PvP) transactions.* A national bank or Federal savings association must hold risk-based capital against any DvP or PvP transaction with a normal settlement period if the national bank's or Federal savings association's counterparty has not made delivery or payment within five business days after the settlement date. The national bank or Federal savings association must determine its risk-weighted asset amount for such a transaction by multiplying the positive current exposure of the transaction for the national bank or Federal savings association by the appropriate risk weight in Table 1 to § 3.136.

TABLE 1 TO § 3.136—RISK WEIGHTS FOR UNSETTLED DVP AND PVP TRANSACTIONS

Number of business days after contractual settlement date	Risk weight to be applied to positive current exposure (in percent)
From 5 to 15 .....	100
From 16 to 30 .....	625
From 31 to 45 .....	937.5
46 or more .....	1,250

(e) *Non-DvP/non-PvP (non-delivery-versus-payment/non-payment-versus-payment) transactions.* (1) A national bank or Federal savings association must hold risk-based capital against any non-DvP/non-PvP transaction with a normal settlement period if the national bank or Federal savings association has delivered cash, securities, commodities, or currencies to its counterparty but has not received its corresponding deliverables by the end of the same business day. The national bank or Federal savings association must continue to hold risk-based capital against the transaction until the national bank or Federal savings association has received its corresponding deliverables.

(2) From the business day after the national bank or Federal savings association has made its delivery until five business days after the counterparty delivery is due, the national bank or Federal savings association must calculate its risk-based capital requirement for the transaction by treating the current fair value of the deliverables owed to the national bank or Federal savings association as a wholesale exposure.

(i) A national bank or Federal savings association may use a 45 percent LGD for the transaction rather than estimating LGD for the transaction provided the national bank or Federal savings association uses the 45 percent LGD for all transactions described in §§ 3.135(e)(1) and (e)(2).

(ii) A national bank or Federal savings association may use a 100 percent risk weight for the transaction provided the national bank or Federal savings association uses this risk weight for all transactions described in §§ 3.135(e)(1) and (e)(2).

(3) If the national bank or Federal savings association has not received its deliverables by the fifth business day after the counterparty delivery was due, the national bank or Federal savings association must apply a 1,250 percent risk weight to the current fair value of the deliverables owed to the national bank or Federal savings association.

(f) *Total risk-weighted assets for unsettled transactions.* Total risk-weighted assets for unsettled transactions is the

sum of the risk-weighted asset amounts of all DvP, PvP, and non-DvP/non-PvP transactions.

#### §§ 3.137–3.140 [Reserved]

#### RISK-WEIGHTED ASSETS FOR SECURITIZATION EXPOSURES

#### § 3.141 Operational criteria for recognizing the transfer of risk.

(a) *Operational criteria for traditional securitizations.* A national bank or Federal savings association that transfers exposures it has originated or purchased to a securitization SPE or other third party in connection with a traditional securitization may exclude the exposures from the calculation of its risk-weighted assets only if each of the conditions in this paragraph (a) is satisfied. A national bank or Federal savings association that meets these conditions must hold risk-based capital against any securitization exposures it retains in connection with the securitization. A national bank or Federal savings association that fails to meet these conditions must hold risk-based capital against the transferred exposures as if they had not been securitized and must deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from the transaction. The conditions are:

(1) The exposures are not reported on the national bank's or Federal savings association's consolidated balance sheet under GAAP;

(2) The national bank or Federal savings association has transferred to one or more third parties credit risk associated with the underlying exposures;

(3) Any clean-up calls relating to the securitization are eligible clean-up calls; and

(4) The securitization does not:

(i) Include one or more underlying exposures in which the borrower is permitted to vary the drawn amount within an agreed limit under a line of credit; and

(ii) Contain an early amortization provision.

(b) *Operational criteria for synthetic securitizations.* For synthetic securitizations, a national bank or Federal savings association may recognize for risk-based capital purposes under this subpart the use of a credit